

NOT FOR CITATION
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

G & G CLOSED CIRCUIT EVENT, LLC,

Plaintiff,

v.

LIEN PHUONG D. NGUYEN,

Defendant.

Case No.: 5:10-CV-05722 EJD

**ORDER SUA SPONTE GRANTING
LEAVE TO FILE MOTION FOR
RECONSIDERATION OF THE
COURT'S ORAL RULING DENYING
DEFENDANT'S MOTION TO SET
ASIDE DEFAULT**

[Re: Docket No. 29]

On September 23, 2011, the court heard oral argument on Defendant Lien Phuong D. Nguyen's ("Nguyen") motion for an order setting aside the default entered in the above-entitled action on August 22, 2011. At the hearing, the court issued an oral ruling denying Nguyen's motion to set aside the default.¹

Although Nguyen has not moved for reconsideration of the court's oral ruling, the court finds it appropriate to exercise its inherent authority to reconsider its ruling on the motion to set aside the default. See U.S. v. Martin, 226 F.3d 1042, 1049 (9th Cir. 2000) (confirming that district court has inherent jurisdiction and authority to modify, alter or revoke its own orders before they become final, "absent some applicable rule or statute to the contrary"); Amarel v. Connell, 102

¹ This ruling was not recorded in the court's minute entry.

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1 F.3d 1494, 1515 (9th Cir. 1996) (citation omitted) (“the interlocutory orders and rulings made pre-
 2 trial by a district judge are subject to modification by the district judge at any time prior to final
 3 judgment”); Fed. R. Civ. P. 54(b) (a decision that does not dispose of every claim “may be revised
 4 at any time before the entry of a judgment”).

5 The court finds that a material difference in law regarding the meritorious nature of
 6 Nguyen’s defense exists from that which was presented to the court before its oral ruling.
 7 Specifically, in Plaintiff’s papers and at oral argument, Plaintiff argued that good faith is not a
 8 defense because 47 U.S.C. §§ 605 and 553 are strict liability offenses. District Courts, however,
 9 have reached conflicting conclusions regarding whether strict liability applies to good faith
 10 purchases. Compare J & J Sports Prods. Inc. v. Gidha, No. CIV-S-10-2509 KJM-KJN, 2011 WL
 11 3439205, at *3 (E.D. Cal. Aug. 4, 2011) (finding defendants could have a meritorious defense
 12 where it purchased cable provider improperly billed them for the residential rate instead of the
 13 commercial rate) with Joe Hand Promotions, Inc. v. Easterling, No. 4:08 CV 1259, 2009 WL
 14 1767579, at *4-5 (N.D. Ohio June 22, 2009) (finding defendant who purchased residential license
 15 had no good faith defense to violating §§ 605 and 553). Because the issue appears to not yet be
 16 resolved within this Circuit, litigation of Nguyen’s defense may not be a “wholly empty exercise.”
 17 TCI Group Life Ins. Plan v. Knoebber, 244 F.3d 691, 700 (9th Cir. 2001). Thus, if Nguyen had
 18 moved for leave to file a motion for reconsideration, the court would have granted her leave. See
 19 Civil L.R. 7-9(b)(1). It therefore is proper for the court to *sua sponte* grant Nguyen leave to file a
 20 motion for reconsideration. Accordingly,

21 IT IS HEREBY ORDERED that no later than January 27, 2012, Nguyen shall file a motion
 22 for reconsideration of the court’s oral ruling denying the motion to set aside the default that
 23 specifically addresses whether Nguyen has a meritorious defense. Any opposition brief shall be
 24 filed no later than 14 days after the motion is filed. See Civil L.R. 7-3. Any reply brief shall be
 25 filed no later than 7 days after the opposition is filed. See id. Oral argument on the motion for
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reconsideration will be heard on March 9, 2012 at 9 a.m.

Dated: January 3, 2012


EDWARD J. DAVILA
United States District Judge

United States District Court
For the Northern District of California

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